to a proper Court *outside* its jurisdiction (section 386), to examine either orally[8] or on certain written questions :—

(*a*) A witness who cannot be compelled to attend, as just stated, or in *any* case if the witness is beyond its local jurisdiction ;

(*b*) Persons about to leave the limit of the jurisdiction before the date of trial ;

(*c*) Civil and Military Officers of Government, who in the Court's opinion cannot attend personally without detriment to the public service.

There are certain conditions attached to the actual use of the reply to the Commission when received, which must be borne in mind and are found in section 390.

A Court may permit certain points (usually those of a formal nature, and which are not likely to be the subject of contention) to be proved by a written deposition or *affidavit*, without the personal attendance of the deponent.

SECTION V.—HEARING AND JUDGMENT.

§19.—*Procedure at Trial.*

I now return to the direct course of proceeding on a civil trial of the full or detailed kind. Smaller cases, when the dispute is of a simple kind, are (as I said) disposed of at first hearing, when the issues, which usually appear at once, are set down, witnesses heard, and a judgment given under Chapter XII of the Code. (See sections 152 and 155.)

In a detailed hearing, the plaintiff begins by stating his case and producing his evidence.

The "right to begin" is a matter of law, which need not trouble the student. In the great majority of cases it is the plaintiff who begins, unless the defendant admits the plaintiff's facts, but

[8] In which case, of course, representatives of the parties will attend *in loco* to examine and cross-examine, and the Court executing the Commission will take down what is answered.

contends either that, on a right view of the law, the plaintiff cannot succeed, or else that there are some other facts alleged by him which show that plaintiff is not entitled to the relief he seeks. In this case, as would naturally follow, the defendant begins. Whoever begins, has the right, at the close of the whole case, to 'reply,' that is, to have the last word in argument before the Court decides.

When the party who begins has stated his case and produced his evidence, the other party states his case and produces *his* evidence.

Where there are several issues and the burden of proof of some of them is with plaintiff and on others by the defendant, the rule of proceeding is given in section 180.

§ 20.—*Record of Evidence.*

Evidence in a civil case is taken in the presence and under personal direction, of the Judge. In cases where there is an appeal it is taken down in full, in narrative form, and must be read over to witness in presence of all concerned, and the Judge must sign it. (Section 182). The Judge makes himself a memorandum of the subsistence of the evidnece as it goes on, and may add remarks as to the demeanour of the witness, &c. (Section 188.)

The Judge may take down particular questions and answers either of his own motion or on request. (Section 186.)

If there is no appeal, a memorandum of the substance only, is recorded. (Section 189.)

There is a special provision for recording the evidence of any witness about to leave the jurisdiction of the Court immediately, and without waiting to call him at the ordinary time during the progress of the trial. (Section 192.)

§ 21.—*Evidence by Affidavit.*

I have already alluded to the fact that any Court may for "sufficient reason" order that any particular fact or facts may be proved by affidavit.

This enables a great deal of formal evidence to be produced

without trouble and delay. It is a condition, however, that this process of *affidavit* shall *not* be adopted, if it appears to the Court—

(*a*) that either side *bonâ fide* desires to cross-examine ;

(*b*) that the witness himself "can be produced."

Affidavits must state facts known to deponent (not hearsay) ; in certain cases only (which the student need not trouble himself with) may the deponent's belief and the grounds of it be stated. Affidavits that offend against this rule are liable to the penalty that the party producing bears the costs.

Affidavits are made on oath before any Magistrate or Court or any officer appointed by a High Court or local Government (Sections 194-7), and require a stamp under Act I of 1879, not a court-fee stamp.

§ 22.—*Judgment and Decree.*

When the case is closed, the Court delivers judgment. The judgment is written in the vernacular of the Judge and is translated into the language of the Courts. (See section 573.)

The judgment sets out the facts on the issues and the reasons for it. Besides the judgment a formal *decree* is signed, which is usually in a printed form, and sets out the precise relief granted by the Court, and what is to be done or paid by either party, and how the costs, and to what amount, are to be paid by either party.

§ 23.—*Costs.*

The only rule which I shall here allude to is that costs of applications during the proceedings may either be given by order at once to either party, or reserved for consideration to the end or any other stage of the proceedings. Whenever the order about costs does not follow the event of the application or suit, the reasons must be recorded (*i.e.*, if costs are given to the party who gains the case, that is the usual thing and no reason for such an order is necessary, but, should the Court decree the claim, but refuse to allow plaintiff's costs, the special reasons for this must be stated.